

CHESAPEAKE BAY
PRESERVATION
ORDINANCE

CITY OF NEWPORT NEWS
VIRGINIA

ORDINANCE NO. 4098-90

AN ORDINANCE TO AMEND AND REORDAIN THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, BY ADDING THERETO A NEW APPENDIX, DESIGNATED APPENDIX D, CHESAPEAKE BAY PRESERVATION ORDINANCE.

BE IT ORDAINED by the Council of the City of Newport News:

1. That the Code of the City of Newport News, Virginia, be and the same hereby is, amended and reordained by adding thereto a new Appendix, designated Appendix D, Chesapeake Bay Preservation Ordinance, to provide as follows:

APPENDIX D

CHESAPEAKE BAY PRESERVATION ORDINANCE

DEC 1990

Section 1-01. Findings of Fact.

The Chesapeake Bay and its perennial tributaries constitute one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Newport News and the Commonwealth of Virginia. The health of the Bay is vital to maintaining Newport News' economy and the welfare of its citizens.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, these lands offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the City Council as Chesapeake Bay Preservation Areas, need to be protected when developed to protect the quality of water in the Bay and consequently the quality of life in the City of Newport News and the Commonwealth of Virginia.

Section 1-02. Purpose and Intent.

A. This ordinance is adopted to implement the requirements of Section 10.1-2100 et seq. of the Code of Virginia (The Chesapeake Bay Preservation Act). The intent of the City Council and the purpose of this ordinance is to: (1) protect existing state and community waters; (2) restore state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) prevent any further

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increase in nonpoint source pollution; (4) reduce existing nonpoint source pollution in state and community waters in order to provide for the health, safety, and welfare of the present and future citizens of the City of Newport News.

B. A Chesapeake Bay Preservation Area Map has been prepared and adopted by City Council that overlays the City's topographic maps at 1:200 scale, so that any parcel of land lying in these areas can be generally identified. Unless otherwise stated in this ordinance, the review and approval procedures provided for in Chapter 13, Building Regulations; Chapter 35, Soil Removal and Other Land-disturbing Activities; Chapter 44, Wetlands; and, Appendices A, Zoning Ordinance; B, Subdivision Regulations; C. Site Plan Ordinance; and, all other applicable ordinances shall be followed in reviewing and approving development, redevelopment, and uses governed by this ordinance.

Section 1-03. Definitions.

The following words and terms used in this ordinance have the following meaning, unless the context clearly indicates otherwise:

1. Agricultural lands. Those lands used for the planting and harvesting of crops or plant growth of any kind in the open, pasture, horticulture, dairying, floriculture, or the raising of poultry and/or livestock, except land used for gardening or landscaping.

2. Best Management Practices (BMP). A practice, or a combination of practices, that is determined to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

3. Buffer area. An area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

4. Chesapeake Bay Preservation Area. Any land designated as such on the Map adopted by the City Council subject to the determination of the Director of Planning and Development on a site-specific basis. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area, a Resource Management Area and any designated Intensely Developed Area.

5. Development. The construction, or substantial alteration, of any improvements upon a parcel of land or any land disturbance associated with those improvements.

6. Diameter at breast height. The diameter of a tree measured outside its bark at a point four and one-half (4.5) feet above the existing grade.

7. Disturbed land area. An area cleared or graded as necessary for the construction of such improvements including, but not limited to, buildings, roads and drives, parking areas, and sidewalks.

8. Dripline. A vertical projection to the ground surface from the furthest

tips of a tree's leaf canopy.

9. Impervious cover. A surface composed of any material which significantly impedes or prevents natural infiltration of water into the soil including, but not limited to: buildings and other structures and their components, streets, parking, and any concrete, asphalt, or compacted gravel surface.

10. Intensely Developed Areas. Any portion of a Resource Protection Area or a Resource Management Area designated by the City Council where development is concentrated and little of the natural environment remains.

11. Map. The Chesapeake Bay Preservation Area Map.

12. Nonpoint source pollution. Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

13. Nontidal wetlands. Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency, in 33 C.F.R. 328.3b, dated November 13, 1986.

14. Noxious weeds. Weeds that are difficult to control effectively, including, but not limited to Johnson Grass, Kudzu, and multiflora rose.

15. Plan of Development. The process for site plan or subdivision plan review to ensure compliance with Section 10.1-2109 of the Code of Virginia and this appendix, prior to any clearing or grading of a site or the issuance of a building permit.

16. Redevelopment. The process of developing land that was previously developed; provided that to be considered developed a parcel must be covered by at least 60% impervious improvements, and provided further than no parcel shall be considered developed which has remained devoid of improvements for at least five (5) years.

17. Resource Management Area (RMA). That component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of a Resource Protection Area.

18. RMA Components - See Section 1-04.A.2.

19. Resource Protection Area (RPA). That component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state and local waters.

20. RPA Components - See Section 1-04.A.1.

21. Tidal shore. The area of land between mean low water level and mean high water level.

22. Tidal wetlands. Vegetated and nonvegetated wetlands as defined in Section 62.1-13.2 of the Code of Virginia.

23. Tributary stream. Any perennial stream depicted as such on the U.S. Geological Survey 7-1/2 minute topographic quadrangle map photorevised in 1986 (scale 1:24,000).

24. Water-dependent facility. A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include:

- a. Beaches and other public water-oriented recreation areas.
- b. Boat repair yards.
- c. City, State and Federal facilities.
- d. Docks, piers, ports, launch ramps, access roads and paths.
- e. Dry docks.
- f. Facilities operated by educational institution for water-dependent research.
- g. Fisheries or other marine resources facilities.
- h. Freight staging areas including dry bulk and liquid bulk.
- i. Fresh water and ice.
- j. Fueling areas.
- k. "High and dry" automated boat storage equipment.
- l. Intake and outfall structures.
- m. Loading and unloading areas.
- n. Marinas and other boat docking structures.
- o. Marina offices and clubhouses including lockers and rest room facilities.
- p. Mooring slips and buoys.
- q. Nature study and passive recreation facilities with no structures or impervious surfaces.
- r. Phone and electric hook-ups.
- s. Public access areas.
- t. Rail lines.
- u. Seafood off-landing, handling and processing.
- v. Sewage pump-out and dioxide toilets.
- w. Sewage treatment plants.
- x. Shipbuilding, repair, maintenance yards and support facilities.
- y. Shore facilities for agriculture.
- z. Water treatment plants.
- aa. Wet dock shop facilities.

25. Wetlands. Any tidal or nontidal wetlands connected by surface flow to tidal wetlands and contiguous to perennial tributary streams.

Section 1-04 Areas of Applicability.

A. The provisions of the Resource Protection Areas and Resource Management Areas shall apply to all lands so adopted by the City Council and as shown on the designated Map. The Map, together with all explanatory matter thereon, shall be adopted by the City Council and shall be a part of this appendix.

1. The components of a Resource Protection Area are:
 - (a) Tidal wetlands;
 - (b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or perennial tributary streams;
 - (c) Tidal shores; and
 - (d) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (a) through (c) above, and along both sides of any perennial tributary stream. Perennial tributaries shall not include manmade watercourses such as any ditch, canal, culvert, drain, or a waterbody used in a system to achieve stormwater management either by detention or retention of stormwater runoff.
2. The components of a Resource Management Area shall consist of all lands within one hundred (100) feet landward of the Resource Protection Area buffer and in addition includes all land containing slopes greater than 15%. In no case shall the Resource Management Area boundary extend beyond the closest boundary of the nearest public street.
3. The City Council may designate at their option Intensely Developed Areas in the City which shall serve as redevelopment areas in which development is concentrated. Areas so designated shall comply with the performance criteria for redevelopment in Section 1-06, Performance Standards.
- B. The Chesapeake Bay Preservation Area Map is hereby declared to delineate the general location of Chesapeake Bay Preservation Areas. The Director of Planning and Development shall have the final authority in cases of uncertainty to determine the extent of these areas by application of the criteria set forth in this section.

Section 1-05 Interpretation of Chesapeake Bay Preservation Areas

A. Delineation by the Applicant

The site-specific boundaries of the Resource Protection Area shall ordinarily be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Director of Planning and Development, in accordance with Section 1-07, Plan of Development. The

Chesapeake Bay Preservation Map shall be used as a guide to the general location of Resource Protection Areas.

B. Where Conflict Arises Over Delineation.

Where the applicant has provided a site-specific delineation of the Chesapeake Bay Preservation Areas, the Director of Planning and Development will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Director of Planning and Development may render adjustments to the applicant's boundary delineation, in accordance with Section 1-07, Plan of Development. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 1-07.I. (Denial/Appeal of Plan).

Section 1-06. Performance Standards.

I. Purpose and Intent

The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve a 40% reduction in nonpoint source pollution from agricultural uses.

II. General Performance Standards for Development and Redevelopment.

A. Chesapeake Bay Preservation Areas

1. All development and redevelopment exceeding 2,500 square feet of land disturbance in the Chesapeake Bay Preservation Area shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.
2. Development in Resource Protection Areas may be allowed only if it: (i) is water-dependent; or (ii) constitutes redevelopment. Best management practices are exempt from this requirement if these improvements are placed within that portion of a required buffer no more than fifty (50) feet from an abutting Resource Management Area boundary line.
3. A water quality impact assessment shall be required for any proposed development or redevelopment within Resource

Protection Areas based upon the intensity of development and in accordance with the provisions of Section 1-07, Plan of Development.

4. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
 - a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be clearly shown on submitted plans and physically marked on the development site.
 - b. Where feasible, ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Director of Engineering.
5. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
 - a. Existing trees over six (6) inches diameter at breast height (DBH) shall be preserved outside the limits of land disturbance. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.
 - b. Clearing shall be allowed only to provide necessary visual and vehicular access, positive site drainage, water quality BMPs, and the installation of utilities as approved by the Director of Engineering.
 - c. Prior to clearing or grading, suitable protective barriers, such as fencing shall be erected five (5) feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier unless otherwise authorized by the Director of Engineering.
6. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
 - a. Pervious surfaces, such as grid and modular pavements, shall be considered for any required parking area, alley, or other low traffic driveway and approved by the Director of Engineering.
 - b. Parking requirements shall be otherwise governed by the Zoning Ordinance.

7. Notwithstanding any other provisions of this ordinance or exceptions or exemptions thereto, including gardening, landscaping and maintenance activities, any land disturbing activity exceeding 2,500 square feet in a Chesapeake Bay Preservation Area, shall comply with the requirements of Chapter 35 of the City Code, Soil Removal and other Land-Disturbing Activities.
8. All on-site sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years.
9. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. The requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the area of such lot or parcel is not sufficient to accommodate a reserve sewage disposal site, as determined by the Department of Public Health. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.
10. For any development or redevelopment that exceeds those land disturbance levels identified in 7. immediately above, stormwater runoff shall be controlled by the use of best management practices that achieve the following:
 - (a) For development, the post-development nonpoint source pollution runoff load of a site shall not exceed the pre-development load for the drainage basin where the site is located and the load shall be based on the calculated land cover conditions of that drainage basin;
 - (b) For redevelopment of sites within a Chesapeake Bay Preservation Area, the nonpoint source pollution load of a site shall be reduced by 10% based on the existing pre-development conditions of the site. The Director of Engineering may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
 - (1) In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
 - (2) Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;

- (3) If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Director of Engineering may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this section.
 - (c) Compliance with a state or locally implemented program of stormwater discharge permits pursuant to 402 (p) of the federal Clean Water Act, as set forth in 40 C.F.R. Parts 122, 123, 124, and 504, dated December 7, 1988, shall be considered to comply with the requirements of subsections (a) and (b).
 - (d) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20% of the site to vegetated open space shall be considered to comply with subsection (b).
 - (e) The Director of Engineering may consider relaxing the 10% reduction of nonpoint source pollution loads where it can be demonstrated that an infill site within a Chesapeake Bay Preservation Area is predominately covered in natural vegetation or it is at the outfall of a drainage basin and the 10% reduction could not be achieved.
 - (f) For redevelopment, both the pre- and post- development loadings shall be calculated using the same procedures. However, where the design data are available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.
- 11. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Director of Engineering, in accordance with Section 1-07. In lieu of the aforesaid permits, the applicant may present a letter from a licensed engineer certifying that in his opinion no such permits are required.
 - 12. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation plan. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this ordinance. Such a plan shall be approved by the local Soil and Water Conservation District by January 1, 1995.
- B. Resource Protection Buffer Area Requirements.

To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, it is recognized that a 100-foot vegetative buffer area is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any natural tributary stream. The full buffer area shall be designated as the landward component of the RPA, in accordance with Sections 1-04, Areas of Applicability and 1-07, Plan of Development.

The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40 percent reduction of nutrients. A combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the full 100-foot buffer area may be employed in lieu of the 100-foot buffer if approved by the Director of Engineering after consideration of the Water Quality Impact Assessment, in accordance with Section 1-07, Plan of Development.

The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, vehicular access, paths, general woodlot management, and best management practices, as follows:
 - (a) Trees may be pruned or removed as necessary to provide for sight lines, vistas, and vehicular access provided that where removed, they shall be replaced with other vegetation, except for vehicular access, that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
 - (b) Any path shall be constructed and surfaced so as not to increase erosion.
 - (c) Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and landscaping or agricultural thinning may be conducted based upon the best available technical information.
 - (d) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Director of Planning and Development, after consulting with the Director of Engineering, may modify the width of the buffer area in accordance with Section 1-07, Plan of Development and the following criteria:
 - (a) Modifications to the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (b) Where possible, an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection; and
 - (c) In no case shall the reduced portion of the buffer area be less than 50 feet in width unless in accordance with Section 1-07.
3. Redevelopment within a Resource Protection Area may be exempt from the buffer area if adjacent land has in place best management practices or the redevelopment is in accordance with Section 1-07, Plan of Development.
4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. The agricultural buffer area may be reduced as follows:
 - (a) To a minimum width of 50 feet when the adjacent land is implementing a federal, state, or locally funded agricultural best management practices program, provided that the combination of the reduced buffer area and the best management practices achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area;
 - (b) To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local Soil and Water Conservation District, has been implemented on the adjacent land. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this ordinance.
 - (c) The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District.
5. Redevelopment within Intensely Developed Areas is exempt from the requirements of this subsection.

C. Intensely Developed Areas

The Council may designate intensely developed areas as an overlay of the Chesapeake Bay Preservation areas within the City. For the purpose of this appendix, intensely developed areas shall serve as redevelopment areas in which development is concentrated as of the adoption date of this appendix. Areas so designated shall comply with the performance criteria for redevelopment noted in Section 1-06 II. A. 10. (b).

Section 1-07. Plan of Development.

A. Required Information.

In addition to the requirements of Appendix C, Site Plan Ordinance, or the requirements of Appendix B, Subdivision Ordinance, of the City Code, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Director of Engineering. The Director of Engineering may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

The following plans or studies shall be submitted unless otherwise noted in each subsection:

1. An environmental site assessment;
2. A landscaping plan;
3. A stormwater management plan;
4. An erosion and sediment control plan in accordance with the provisions of Chapter 35 of this Code.
5. A water quality impact assessment as necessary under the requirements of Subsection F.

B. Environmental Site Assessment.

An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval for any development or redevelopment exceeding 2,500 square feet of land disturbance in a Chesapeake Bay Preservation Area.

1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - (a) Tidal wetlands;
 - (b) Tidal shores;
 - (c) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;

- (d) A 100-foot buffer area located adjacent to and landward of the components listed in subsections (a) through (c) above, and along both sides of any perennial tributary stream;
- 2. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989.
- 3. The environmental site assessment shall delineate the site-specific geographic extent of the Resource Protection Area.
- 4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Director of Engineering when the proposed use or development would result in less than 2,500 square feet of disturbed area.

C. Landscaping Plan.

A landscaping plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.

Landscaping plans shall be prepared and certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

1. Contents of the Plan.

- (a) The landscaping plan shall be drawn to scale and clearly delineate the location, size and description of existing and proposed plant material. All existing trees on the site six (6) inches or greater DBH shall be shown on the landscaping plan. Where there are groups of five or more trees, stands may be outlined instead. The specific number of trees six (6) inches or greater DBH to be preserved outside of the land disturbance area shall be indicated on the plan. Trees to be removed shall be clearly delineated on the landscaping plan. The plan shall be consistent with Appendix C of the City Code, Site Plan Ordinance.
- (b) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this ordinance, shall be shown on the landscaping plan.
- (c) Within the buffer area, trees to be removed for sight lines,

vistas, vehicular access, paths, and best management practices, as provided for in this ordinance shall be shown on the plan. Vegetation required to replace any existing trees within the buffer area shall be also be shown on the landscaping plan.

- (d) Trees to be removed for shoreline stabilization projects and any replacement vegetation required shall be shown on the landscaping plan.
- (e) The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- (f) The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction, consistent with such measures as described in Appendix C, Site Plan Ordinance of the City Code.

2. Plant Specifications.

- (a) All plant materials necessary to supplement the buffer area or vegetated areas outside the disturbed land area shall be installed in accordance with the specifications referred to in Appendix C, Site Plan Ordinance of this Code.
- (b) All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- (c) Where areas to be preserved, as designated on an approved landscaping plan, are encroached upon replacement of existing trees and other vegetation will be achieved at a ratio of three (3) planted trees to one (1) removed. Replacement trees shall be a minimum two and one-half (2.5) inches DBH at the time of planting.

D. Stormwater Management Plan.

A stormwater management plan shall be submitted as part of the plan of development process required by this ordinance and in conjunction with site plan or subdivision plan approval.

1. Contents of the Plan.

The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this ordinance. At a minimum, the

stormwater management plan must contain the following:

- (a) Location and design of all planned stormwater control devices.
 - (b) Procedures for implementing non-structural stormwater control practices and techniques which can be described in narrative form.
 - (c) Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations.
 - (d) For facilities, verification of structural soundness, including a Professional Engineer or Class IIIB Surveyor Certification;
2. Site-specific facilities shall be designed for the ultimate development of that site based on zoning, comprehensive plans, or other similar planning documents.
 3. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, Virginia Erosion and Sediment Control Handbook, Virginia Department of Transportation Drainage Manual, or the City's Design Criteria Manual and the City's Standards and Specifications Manual.
 4. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the City of Newport News then a maintenance agreement shall be executed between the responsible party and the City.

E. Erosion and Sediment Control Plan.

An erosion and sediment control plan shall be submitted that satisfies the requirements of, and in accordance with, Chapter 35 of this Code, in conjunction with site plan or subdivision plan approval.

F. Resource Protection Area Water Quality Impact Assessment

1. Purpose and Intent.

The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed development on water quality and lands within the Resource Protection Areas; (ii) ensure that, where development does take place within these areas, it will be the least disruptive; (iii) provide for administrative relief from the terms of this ordinance when warranted and in accordance with the requirements contained herein; and (iv) specify mitigation which will address water quality protection.

2. Water Quality Impact Assessment Required.

A water quality impact assessment is required for any proposed development within a Resource Protection Area, including any buffer area modification or reduction as provided for in Section 1-07 unless waived by the Director of Engineering. There shall be two levels of water quality impact assessments: a minor assessment and a major assessment.

3. Minor Water Quality Impact Assessment.

A minor water quality impact assessment pertains only to development within the Resource Protection Area which causes no more than 5,000 square feet of land disturbance and requires any modification or reduction of the landward 50 feet of the 100-foot buffer area. Submission of a plan of development that demonstrates through the use of calculations provided for by Section 1-07(d)(1) that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff shall be deemed to have satisfied the requirement for a minor water quality impact assessment.

4. Major Water Quality Impact Assessment.

A major water quality impact assessment shall be required for any development which (i) exceeds 5,000 square feet of land disturbance within a Resource Protection Area and requires any modification or reduction of the landward 50 feet of the 100-foot buffer area, or (ii) disturbs any portion of the seaward 50 feet of the 100-foot buffer area or any other component of an RPA. The information required in this section shall be considered a minimum, unless the Director of Engineering determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

(a) A hydrogeological element that:

- (1) Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
- (2) Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
- (3) Describes the proposed mitigation measures for the potential hydrogeological impacts which may include:
 - a. Proposed erosion and sediment controls; including minimizing the extent of the cleared area, and cut and fill, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
 - b. Proposed stormwater management system;

- c. Creation of wetlands to replace those lost; and
 - d. Minimizing cut and fill.
- (b) A landscape element that describes the potential measures for mitigation of the water quality and land impacts including:
- (1) Replanting schedule for trees and other significant vegetation removed for construction;
 - (2) Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation; and
 - (3) Demonstration that indigenous plants are to be used to the greatest extent possible.
- (c) As part of any major water quality impact assessment submittal, the City Manager, upon the recommendation of the Director of Planning and Development and the Director of Engineering, may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the City Manager, upon the recommendation of the Director of Planning and Development and the Director of Engineering, will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Director of Engineering, provided that such comments are provided by CBLAD within 90 days of the request.

5. Evaluation Procedure.

- (a) Upon the completed review of a minor water quality impact assessment, the Director of Engineering will determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this appendix and that the following criteria have been satisfied:
- 1. The proposed encroachment is necessary due to the inability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - 2. Impervious surface is minimized;
 - 3. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings; and
 - 4. The development, as proposed, meets the purpose and intent of this ordinance.

(b) Upon the completed review of a major water quality impact assessment, the Director of Engineering will determine if the proposed development satisfies the following criteria:

- (1) Within any RPA, the proposed development is water-dependent;
- (2) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
- (3) Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
- (4) Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits;
- (5) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(G) Final Plan.

1. Final plans for all lands within a Resource Protection Area shall include the following additional information:

- (a) The delineation of the Resource Protection Area boundary;
- (b) The delineation of required buffer areas;
- (c) Evidence of all wetlands permits required by law or a letter from a licensed engineer certifying that in his opinion no such permits are required; and
- (d) A maintenance agreement as deemed necessary and appropriate by the Director of Engineering to ensure proper maintenance of best management practices in order to continue their functions.

2. Installation and Surety Requirements.

- (a) When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the City of Newport News a form of surety satisfactory to the City Attorney in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or other specifications or maintenance costs for any required stormwater management

facilities.

- (b) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the City of Newport News.
- (c) All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to City of Newport News. The City of Newport News may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
- (d) After all required actions of the approved plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Director of Engineering, such unexpanded or unobligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The Director of Engineering may require a certificate of substantial completion from a Professional Engineer or Class III B Surveyor before making a final inspection.

(H) Administrative Responsibility.

Administration of the plan of development process shall be in accordance with Appendix C, Site Plan Ordinance.

(I) Denial of Plan, Appeal of Conditions or Modifications.

In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the City Manager. Such appeals must be in writing and be filed within ten (10) working days of the decision from which appeal is sought. Prior to granting relief to an application, the City Manager must find that the plan is in accordance with all applicable ordinances and includes all necessary elements to mitigate any detrimental impact on water quality. If the City Manager finds that the applicant's plan does not meet the above stated criteria, he shall deny the relief sought.

Section 1-08. Development Waivers.

The lawful use of a building or structure which existed on the adoption date of the appendix and which is not in conformity with these provisions may be continued.

No expansion of existing structures shall be allowed with the exception that:

1. The Director of Planning and Development may grant a development waiver for the expansion of existing structures provided that the Director of Engineering has certified that:
 - (a) There will be no net increase in nonpoint source pollution load;
 - (b) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.
2. Structures existing within the Chesapeake Bay Preservation Areas as of the adoption date of the appendix which are destroyed by casualty or Act of God may be reconstructed as a matter of right, provided that reconstruction begins within two (2) years of the casualty, reconstruction is, thereafter, diligently pursued, and the new structure is constructed entirely on or within the boundary (footprint) of the original structure.
3. No development waiver shall be required to perform normal maintenance on any structure within a Chesapeake Bay Preservation Area existing on the adoption date of this appendix.

Section 1-09. Exemptions for Utilities, Railroads and Facilities.

1. Construction, installation, operation, and maintenance of electric, gas, CATV lines, railroads, and public roads and their appurtenant structures in accordance with the Erosion and Sediment Control Law (10.1-560 et seq. of the Code of Virginia) or erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board will be deemed to constitute compliance with this appendix.
2. Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the criteria in this appendix provided that:
 - a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
 - b. No more land shall be disturbed than is necessary to provide for the desired utility installation.
 - c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality.

d. Any land disturbance exceeding an area of 2500 square feet complies with all erosion and sediment control requirements of this appendix.

B. Exemptions for Forestry Activities.

Forestry activities are exempt from the requirements of this appendix provided that such operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations."

C. Exemptions in Resource Protection Areas.

The following land disturbances may be exempted in the Resource Protection Areas: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Director of Planning and Development that:

- (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
- (2) Any land disturbance exceeding an area of 2,500 square feet shall comply with all City of Newport News erosion and sediment control requirements.

Section 1-10. Exceptions.

A. A request for an exception to the requirements of this ordinance shall be made in writing to the Director of Planning and Development. It shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Areas through the performance of a water quality impact assessment which complies with the provisions of Section 1-07 F.

B. The Chesapeake Bay Compliance Committee shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this ordinance if the Chesapeake Bay Compliance Committee finds:

- (1) The exception request is the minimum necessary to afford relief; and
- (2) The exception request will be in harmony with the purpose and intent of this ordinance, and not injurious to the neighborhood or otherwise detrimental to the public welfare.

Section 1-11. Conflict with other Regulations.

In any case where the requirements of this ordinance conflict with any other provision of the Code of the City of Newport News or existing state or

federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 1-12. Enforcement

Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00. Each day's continuance of such violation shall constitute a separate offense.

2. This ordinance shall be effective on and after July 1, 1991.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS, SEPTEMBER 18, 1990.

Bernice I. Berry, CMC/AAE
City Clerk

Barry E. DuVal
Mayor

A true copy, teste:

A handwritten signature in cursive script, appearing to read "Bernice I. Berry".

City Clerk

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